

## MEMORANDUM

**To:** Sarah Rogers  
FOA, Inc. Board President

**From:** David D. Oberg, Esq.

**Date:** August 23, 2021

**Re:** Application of the ADA to HOA facilities

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Dear Sarah,

You requested that I provide greater clarity regarding the application of the Americans with Disabilities Act of 1990 (“the ADA”) to the Fontana HOA facilities and property. The ADA applies to any facility that has 25 or more employees (which obviously doesn’t apply to Fontana) and to any place of “public accommodation.” Public accommodations are considered to be businesses including private entities that are open to the public or that provide goods or services to the public.

Generally, private clubs or organizations are not subject to the requirements of the ADA. However, to the extent that the HOA provides public accommodations, it can subject the HOA to ADA requirements. So long as access to the facilities is explicitly limited to members of the association, then there is not a public accommodation. However, to the extent that non-members who are not invited guests of the HOA are allowed to access the facilities, then the ADA would apply. The clearest example of creating a public accommodation is if the HOA enters into a commercial transaction with a member of the public, such as leasing the pool to a member of the public or to a private organization. In addition, in my opinion allowing short-term rental guests to use the facility would clearly constitute a public accommodation. The same is true of long-term tenants of an HOA member who are leasing the residence as members of the public (it would be a less clear circumstance if the “tenant” were a member of the owners extended family). To the extent that homes are leased to persons outside of the homeowners family, I would encourage the HOA to prohibit those tenants from using the HOA facilities.

Public accommodation would also include allowing outside organizations (i.e. schools, church youth groups, exercise classes) to use the facilities on a regular basis (as opposed to an occasional member-sponsored event). For instance, if the HOA allowed a local church to regularly have their youth group meet at the facility, that would likely constitute a public accommodation. In contrast, a pool party for an HOA member’s birthday (where the attendees are not charged for admission) would not constitute a public accommodation irrespective of how many people were invited.

I hope that this was helpful, but if you have additional questions, or if you would prefer that I explain this to your Board members directly, please let me know and we can schedule a time for that to occur.

-David